



California Fair Political Practices Commission

October 31, 1988

Wes Van Winkle
Law Offices of Bagatelos and Fadem
International Building
601 California St., Suite 1801
San Francisco, CA 94108

Re: Your Request for Advice
Our File No. I-88-193

Dear Mr. Van Winkle:

Please excuse my delay in responding to your letter confirming our telephone conversation regarding the application of Regulation 18727 to the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Because your request for advice is more of a general inquiry than a request for advice as to a specific action pending before a public agency, we treat your request as one for informal assistance.^{2/}

QUESTIONS

1. Does Regulation 18727, which excepts home hospitality from the definition of "gift," apply equally to disclosure and disqualification provisions of the Act?

2. Is a gift to a public official from the general partner of a business considered a gift from the business rather than the individual?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSIONS

1. Regulation 18727 applies to disclosure and disqualification provisions of the Act.

2. A gift from an individual who is a general partner of a business is not presumed to be from the business unless there is evidence that the business is involved in making the gift, or unless the general partner derives a business benefit therefrom.

ANALYSIS

Regulation 18727

Regulation 18727 reads:

For purposes of Government Code Section 87207(a), the term "gift" does not include the value of gifts:

(a) Of hospitality involving food, beverages or lodging provided by an individual in his or her home to any public official filing a Statement of Economic Interests;

(b) Exchanged between a public official filing a Statement of Economic Interests and an individual other than a lobbyist on holidays, birthdays, or similar such occasions. This provision does not apply to the extent that the gifts received by the public official exceed in value the gifts that he or she has given.

The statute cited in this regulation, Section 87207(a), requires a public official to disclose gifts worth \$50 or more. Regulation 18727(a) exempts gifts of home hospitality from this disclosure requirement. You want to know whether Regulation 18727(a) also exempts gifts of home hospitality for disqualification purposes.

As I mentioned over the telephone, where the regulation provides for an exception to the definition of gift, that exception is applicable to disqualification situations as well as reporting situations. We feel it would be too confusing to require public officials to disqualify themselves based on receipt of a gift that is not reportable.

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Gifts from General Partners

Section 87207(a) requires that all officeholders report receipt of gifts valued at fifty dollars (\$50) or more. The officeholder must list on the annual statement of economic interests the name and address of the source, and the amount and date on which the gift was received. No person shall make, and no public official may receive a gift totaling \$50 or more without disclosing the true source of the gift. (Sections 87210 and 87313.)

Consequently, the donor must disclose the true source of any gift to the officeholder. When a general partner uses his or her own funds to donate a gift, there is no presumption that the gift is from the partner's business. (See In re Lumsdon (1976) 2 FPPC Ops. 140, copy enclosed.)

If, however, the business pays for the gift, or if the partner takes a business deduction, is reimbursed for the expense by the business or receives some other business benefit therefrom, the gift would be attributed to the business, and the partner viewed as an intermediary.

I trust this clarifies our telephone advice. If you have additional questions, please contact me at (916)322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Lilly Spitz
Counsel Legal Division

DMG:LS:plh

Enclosure

LAW OFFICES OF
BAGATELOS & FADEM

BARRY FADEM
PETER A. BAGATELOS

THE INTERNATIONAL BUILDING
601 CALIFORNIA STREET
SUITE 1801
SAN FRANCISCO, CALIFORNIA 94108

MAY 21 1 23 PM '88

TELEPHONE
(415) 982-7100
FAX
(415) 982-1065

May 17, 1988

Lilly Spitz, Esq.
Counsel - Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804

Re: Applicability of 2 Administrative Code 18727

Dear Ms. Spitz:

I am writing to confirm telephone advice which you provided on May 17, 1988 regarding the interpretation of 2 Administrative Code Section 18727.

As you will recall, this section provides that "for the purposes of Government Code Section 87207(a), the term 'gift' does not include the value" of most home hospitality or certain gifts provided to public officials on holidays, birthdays, or other such traditional occasions. However, because Government Code Section 87207(a) by its terms deals only with the manner in which gifts are disclosed on a public official's Statement of Economic Interests, I had inquired whether the same exemption of home hospitality and holiday gifts applied in determining whether a public official would be required to disqualify himself or herself under Government Code Section 87103(e).

You indicated that, in the opinion of the FPPC legal department, the exemption of home hospitality and holiday gifts contained in 2 Administrative Code Section 18727 extended to disqualification under Government Code Section 87103(e) in spite of the fact that the language of Section 18727 specifically limits that sections applicability to "the purposes of Government Code Section 87207(a)". If this interpretation were not followed, you indicated that a public official might be required to disqualify himself or herself from a governmental decision, in spite of the fact that he or she was not required to disclose the matters which required disqualification. Thus, in order to avoid this absurd result, 2 Administrative Code Section 18727 should be read as extending to Government Code Section 87100 et seq.

Lilly Spitz, Esq.
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I had also inquired under what circumstances a gift to a public official from the general partner of a business would be considered a gift from the partnership rather than from the individual. You indicated that under most circumstances the gift would be deemed to be from the individual partner rather than the partnership, unless the partner derived some business benefit from the gift. You cited the hypothetical example of a partner who presented a public official with a gift, but subsequently took a business deduction for the value of the gift. Under those circumstances, you indicated that the gift would be attributable to the partnership entity rather than to the partner as an individual.

Thank you for your prompt and courteous advice. Please do not hesitate to contact me at this office if I have inadvertently mistated your advice in this letter.

Sincerely,



Wes Van Winkle

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SUITE 1801
SAN FRANCISCO, CALIFORNIA 94108

BARRY FADEM
PETER A. BAGATELOS

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